



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,047	02/14/2002	Julius W. Zuehlke	Q68563	7601

7590 06/02/2004

SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, NW
Washington, DC 20037-3213

EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10674547

Applicant(s)

ZUEHLKE ET AL

Examiner

ARTHUR L. COBBIN

Group Art Unit

1765

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-6 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-6 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))
- *Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yotka et al (5,458,892, column 6 in view of Cherukuri et al (4,352,825).

Yotka et al discloses a chewing gum product which is coated with a sugar-free, co-dried blend of indigestible dextrin and hydrogenated starch hydrolysate (HSH). It would have been obvious that said blend is equivalent to applicant's claimed syrup (HISS) since the indigestible dextrin makes the blend indigestible, and since HSH is equivalent to hydrogenated starch syrup, as evidenced by Cherukuri et al (column 3, lines 60-61). Finding the optimum amount of dietary fiber to be used in the starch syrup (claim 4) would require nothing more than routine experimentation by one reasonably skilled in this art.

The limitation in claim 3 is a method of limitation entitled to no patentable weight in applicant's product claims. However, the process claimed in claim 3 is conventional according to page 2, lines 23-26 of applicant's specification.

3. Claims 1-6 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent 10-150934 in view of Yotka et al.

According to page 2, lines 23-26 of applicant's specification, the Japanese patent prepares HISS, in the manner claimed by applicant (claim 3), to be used in food

Art Unit: 1761


products. It would have been obvious to use said HISS to coat chewing gum since it is old to coat chewing gum with a co-dried blend of indigestible dextrin and HSH, as evidenced by Yotka et al (column 6), and since said blend is substantially equivalent to HISS.

4. Any inquiry concerning this communication the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can generally be reached on Monday--Friday from 10:30 to 8:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.L. Corbin/dh
May 27, 2004



ARTHUR L. CORBIN
PRIMARY EXAMINER
5-27-04